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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

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11 **IVY LITTLE-CADMAN,**) Case No.
12)
13 Plaintiff,) **COMPLAINT FOR VIOLATION**
14) **OF FEDERAL FAIR DEBT**
15) **COLLECTION PRACTICES ACT**
16)
17 **vs.**)
18)
19 **VEGALO, LLC, DBA FRONTIER**
20 **FINANCIAL GROUP, INC, AKA)**
21 **FFG & ASSOCIATES AND)**
22 **MARTIN G. MAZZARA,**)
23)
24 Defendants.)
25

26 **NATURE OF ACTION**

27 1. This is an action brought under the Fair Debt Collection Practices
28 Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Telephone Consumer
Protection Act (“TCPA”), 47 U.S.C. § 227.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 47 U.S.C. §

227(b)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this State and this district, where Plaintiff resides in this State and this district, and where Defendants transact business in this State and this district.

PARTIES

4. Plaintiff, Ivy Little-Cadman ("Plaintiff"), is a natural person who at all relevant times resided in the State of Washington, County of Whatcom, and City of Ferndale.

5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

6. Defendant, Vegalo, LLC, dba Frontier Financial Group, Inc, aka FFG & Associates ("Vegalo") is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. §1692a(5).

7. Defendant, Martin G. Mazzara ("Mazzara") is an individual who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. §1692a(5).

8. "Employees can be held personally liable under the FDCPA."

1 *Robinson v. Managed Accounts Receivable Corp.*, 654 F. Supp. 2d 1051, 1059
 2 (C.D. Cal. 2009); see *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1070-71
 3 (E.D. Cal. 2008).
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5 9. Furthermore, “most district courts that have addressed the issue have
 6 held that the corporate structure does not insulate shareholders, officers, or
 7 directors from personal liability under the FDCPA.” *Schwarm v. Craighead*, 552
 8 F. Supp. 2d 1056, 1070-71 (E.D. Cal. 2008); see *Kistner v. Law Offices of*
 9 *Michael P. Margelefsky, L.L.C.*, 518 F.3d 433, 437-38 (6th Cir. 2008); *del Campo*
 10 *v. Kennedy*, 491 F. Supp. 2d 891, 903 (N.D.Cal.2006); *Brumelow v. Law Offices*
 11 *of Bennett & Deloney, P.C.*, 372 F.Supp.2d 615, 618-21 (D. Utah 2005);
 12 *Albanese v. Portnoff Law Assocs., Ltd.*, 301 F. Supp. 2d 389, 400 (E.D. Pa. 2004);
 13 *Musso v. Seiders*, 194 F.R.D. 43, 46-47 (D.Conn.1999); *Brink v. First Credit*
 14 *Res.*, 57 F. Supp. 2d 848, 861-62 (D. Ariz. 1999); *Pikes v. Riddle*, 38 F. Supp. 2d
 15 639, 640 (N.D. Ill. 1998); *Ditty v. CheckRite, Ltd.*, 973 F. Supp. 1320, 1337-38
 16 (D. Utah 1997); *Newman v. Checkrite Cal., Inc.*, 912 F. Supp. 1354, 1372 (E.D.
 17 Cal.1995); *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D. N.Y.
 18 1994).
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25 10. Vegalo, LLC, dba Frontier Financial Group, Inc, aka FFG &
 26 Associates and Martin G. Mazzara (“Defendants”) are “debt collectors” as
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1 defined by 15 U.S.C. § 1692a(6).

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3 **FACTUAL ALLEGATIONS**

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5 11. Plaintiff is a natural person obligated, or allegedly obligated, to pay a
6 debt owed or due, or asserted to be owed or due a creditor other than Defendants.

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8 12. Plaintiff's obligation, or alleged obligation, owed or due, or asserted
9 to be owed or due a creditor other than Defendants, arise from a transaction in
10 which the money, property, insurance, or services that are the subject of the
11 transaction were incurred primarily for personal, family, or household purposes.

12
13 13. Defendants use instrumentalities of interstate commerce or the mails
14 in a business the principal purpose of which is the collection of any debts, and/or
15 regularly collects or attempts to collect, directly or indirectly, debts owed or due,
16 or asserted to be owed or due another.

17
18 14. Within one (1) year preceding the date of this Complaint, Defendants
19 made and/or placed a telephone call to Plaintiff's cellular telephone number, in
20 effort to collect from Plaintiff an obligation, or alleged obligation, owed or due,
21 or asserted to be owed or due a creditor other than Defendants.

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23 15. Within one (1) year preceding the date of this Complaint, Defendants
24 willfully and knowingly utilized an automatic telephone dialing system to make
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1 and/or place a telephone call to Plaintiff's cellular telephone number, in effort to
 2 collect from Plaintiff an obligation, or alleged obligation, owed or due, or asserted
 3 to be owed or due a creditor other than Defendants.
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5 16. Defendants placed a call to Plaintiff's cellular telephone on October
 6 18, 2010 @ 9:24 A.M., and at such time, failed to notify Plaintiff that the
 7 communication was from a debt collector. During the course of the phone call
 8 Defendants falsely represented that Plaintiff was being contacted about a check
 9 Plaintiff wrote and needed to contact Defendants for "security purposes." (15
 10 U.S.C. § 1692e(10), 1692e(11)).
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 14 **15 U.S.C. §1692(e)(11)**

15 17. The FDCPA at section 1692e(11) provides:
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17 A debt collector may not use any false, deceptive, or
 18 misleading representation or means in connection with
 19 the collection of any debt. Without limiting the general
 20 application of the foregoing, the following conduct is a
 21 violation of this section:
 22

23 * * *

24
 25 (11) The failure to disclose in the initial written
 26 communication with the consumer and, in addition, if
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1 the initial communication with the consumer is oral, in
2 that initial oral communication, that the debt collector is
3 attempting to collect a debt and that any information
4 obtained will be used for that purpose, and the failure to
5 disclose in subsequent communications that the
6 communication is from a debt collector, except that this
7 paragraph shall not apply to a formal pleading made in
8 connection with a legal action.
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12 15 U.S.C. §1692e(11).
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14 18. “The provisions of the FDCPA are clear that in initial or subsequent
15 communications, it must be disclosed that the communication is from a debt
16 collector.” *Drossin v. Nat’l Action Financial Services, Inc.*, 641 F. Supp. 2d
17 1314, 1319 (S.D. Fla. 2009).
18

19 19. “A collection agent must follow the disclosure requirement of
20 identifying himself as a debt collector in all communications.” *Masciarelli v.*
21 *Richard J. Boudreau & Associates, LLC*, 529 F. Supp. 2d 183, 186 (D. Mass.
22 2007); *Winberry v. United Collection Bureau, Inc.*, 692 F. Supp. 2d 1279, 1292
23 (M.D. Ala. 2010) (“This court is persuaded that the plain language of the statute
24 as it now reads, having been amended, requires a debt collector to identify in
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subsequent communications that he is a debt collector”); *Pipiles v. Credit Bureau of Lockport*, 886 F. 2d 22, 26 (2d Cir. 1989) (“[W]e must now address the question left open in *Emanuel* and determine whether the Notice, a follow-up communication, was also required to comply. We hold that it was, and therefore rule that *Pipiles* has established a violation of section 1692e(11).”); *Frey v. Gangwish*, 970 F. 2d 1516, 1520 (6th Cir. 1992) (“follow-up communications are subject to the disclosure requirements of section 1692e(11)”); *Carroll v. Wolpoff & Abramson*, 961 F. 2d 459, 461 (4th Cir. 1992), cert. denied, 113 S. Ct. 298 (1992) (holding that follow-up notices are subject to the disclosure requirements of section 1692e(11)); *Dutton v. Wolpoff & Abramson*, 5 F. 3d 649, 654 (3d Cir. 1993) (rejecting *Pressley* because it “changes the clear and unambiguous language ‘all communications’ and substitutes the more limited phrase ‘some communications.’”)

20. Voice messages from debt collectors to debtors are “communications” regardless of whether a debt is mentioned in the message. *Hutton v. C.B. Accounts, Inc.*, 2010 WL 3021904, 2-3 (C.D. Cal. 2010) (“[A] debt collector’s failure to identify itself as such in initial and subsequent communications, be they oral or written, with a debtor is a violation of the FDCPA.”); *Savage v. NIC, Inc.*, 2009 WL 2259726, *3 (D. Ariz. 2009) (“the

1 Court finds that leaving a phone message constitutes the placement of a telephone
2 call under § 1692d(6).”); *Berg v. Merchants Assoc. Collection Div., Inc.*, 586 F.
3 Supp. 2d 1336, 1340-1341 (S.D. Fla. 2008) (“Although debt collectors are to
4 refrain from mentioning the debt when communicating with third parties, they
5 must indicate to the consumer their identity, that the debt collector is attempting
6 to collect a debt, and that any information obtained would be used for that
7 purpose.”) (citing *Belin v. Litton Loan Servicing, LP*, 2006 WL 1992410 *4
8 (M.D. Fla. 2006) (“[M]essages left on answering machines that did not directly
9 convey information about a debt were still communications under the FDCPA,
10 because they conveyed information about a debt indirectly, since the purpose of
11 the message is to get the debtor to return the call to discuss the debt.”)); *Foti v.*
12 *NCO Fin. Sys.*, 424 F. Supp. 2d 643, 655-56 (S.D. N.Y. 2006) (“Thus, given the
13 choice of language by Congress, the FDCPA should be interpreted to cover
14 communications that convey, directly or indirectly, any information relating to a
15 debt, and not just when the debt collector discloses specific information about the
16 particular debt being collected.”); *Hosseinzadeh*, 387 F. Supp. 2d at 1115-16
17 (“[M]essages left by defendant on plaintiff’s answering machine constitute
18 “communications.”) (citing FTC Staff Commentary on FDCPA, 53 Fed. Reg.
19 50103 (Dec. 13, 1988) (rejecting contentions that “contacts that do not explicitly
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1 refer to the debt are not ‘communications’ and, hence, do not violate any
2 provision where that term is not used” and concluding that some contacts that do
3 not mention debt may refer to the debt “indirectly,” thereby constituting
4 communications)).
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7 21. Defendants placed non-emergency calls to Plaintiff’s cellular
8 telephone on such dates and times including, but not limited to, October 18, 2010
9 @ 9:24 A.M., without the prior express consent of Plaintiff, using an automatic
10 telephone dialing system and/or an artificial or pre-recorded voice. (47 U.S.C.
11 227(b)(1)(A)(iii)).
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14 22. Defendants’ actions constitute conduct highly offensive to a
15 reasonable person.
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17 **COUNT I**
18 **DEFENDANT VEGALO**

19 23. Plaintiff repeats and re-alleges each and every allegation contained
20 above.
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22 24. Defendant violated the FDCPA as detailed above.

23 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

24 a) Adjudging that Defendant violated the FDCPA;
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26 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k,
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1 in the amount of \$1,000.00;

2 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;

3
4 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
5 this action;

6
7 e) Awarding Plaintiff any pre-judgment and post-judgment interest as
8 may be allowed under the law;

9
10 f) Awarding such other and further relief as the Court may deem just
11 and proper.

12 **COUNT II**
13 **DEFENDANT MAZZARA**

14 25. Plaintiff repeats and re-alleges each and every allegation contained
15 above.
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17 26. Defendant violated the FDCPA as detailed above.
18

19 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

20 g) Adjudging that Defendant violated the FDCPA;

21
22 h) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k,
23 in the amount of \$1,000.00;

24 i) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;

25
26 j) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
27

- k) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- l) Awarding such other and further relief as the Court may deem just and proper.

27. Plaintiff repeats and re-alleges each and every allegation contained above.

28. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly utilizing an automatic telephone dialing system to make and/or place a telephone call to Plaintiff's cellular telephone number.

- a) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii);
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. § 227(b)(3)(B), in the amount of \$500.00 per violation;
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. § 227(b)(3)(C), in the amount of \$1,500.00 per violation;
- d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. §

1 227(b)(3)(B);

2 e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
3 this action;

4
5 f) Awarding Plaintiff any pre-judgment and post-judgment interest as
6 may be allowed under the law.
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8 **TRIAL BY JURY**

9 Plaintiff is entitled to and hereby demands a trial by jury.
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12 Respectfully submitted this 27th day of May, 2011.
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14
15 s/Jon N. Robbins
16 Jon N. Robbins
17 WEISBERG & MEYERS, LLC
18 Attorney for Plaintiff
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